S.B. CIVIL WRIT PETITION NO. 3889/1993
(Hira Lal Choudhary vs. UOI & Ors.)

DATE OF ORDER : 10.02.2006

HON'BLE MR. GOVIND MATHUR, J.

Mr. D.R. Bhandari, for the petitioner.
Mr. B.L. Tiwari, Dy. Govt. Advocate.

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A mining lease near village Karbara–I, Tehsil– Jhadol, Distt. Udaipur was granted to the petitioner on 09.07.1970, in respect of Asbestos, a major mineral, for a period of twenty years. The petitioner submitted an application for renewal of the mining lease, which came to be rejected by the Government of Rajasthan by an order dated 23.07.1993, on the count that no approval as required under Mines and Minerals (Regulation and Development) Act, 1957 was received from Central Government. In fact Government of India by an order dated 09.07.1986 rejected the proposal for renewal, being found Asbestos mining hazardous to human life. Aggrieved by the same the instant petition for writ is preferred by the petitioner.

It is contended by counsel for the petitioner that in view of the Rule 26 of The Mineral Concession Rules, 1960 no application for renewal could be refused without affording an opportunity of

hearing and for reasons to be recorded in writing. The Rule 26 referred above reads as under:

> "26. Refusal of application for grant and renewal of mining lease.–
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> [(1)] [The State Government may, after giving an opportunity of being heard and] for reasons to be recorded in writing and communicated to the applicant, refuse to grant or renew a mining lease over the whole or part of the area applied for.
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> [(2) An application for the grant or renewal of a mining lease made under rule 22 or rule 24A, as the case may be, shall not be refused by the State Government only on the ground that Form I or Form J, as the case may be, is not complete in all material particulars or is not accompanied by the documents referred to in sub–clauses (d), (e), (f), (g) and (h) of clause (i) of sub–rule (3) of rule 22].
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> (3) Where it appears that the application is not complete in all material particulars or is not accompanied by the required documents, the State Government shall, by notice, require the applicant to supply the omission or, as the case may be, furnish the documents, without delay and in any case not later than thirty days from the date of receipt of the said notice by the applicant."

From the perusal of provision of sub–Rule (1) of Rule 26 of the Rules of 1960 it is apparent that an opportunity of hearing is required to be given to the applicant before refusing an application for renewal of a mining lease. No such opportunity of hearing was afforded to the petitioner by the respondents. The refusal therefore by the order impugned is in contravention of Rule

26 of the Rules of 1960.

The another contention of the counsel for the petitioner is that Asbestos mining can not be unilaterally treated hazardous and ordered to be closed. The question as to whether Asbestos mining is hazardous to human life or not is required to be decided by the experts and not by this Court while exercising powers under Article 226 of the Constitution of India. If the petitioner is having any grievance with regard to decision of the Government of India he should approach to the competent authorities of the Government.

However, as I held above, order dated 23.07.1993 passed by the Dy. Secretary, Government of Rajasthan, Department of Mines (Gr.–I) is in contravention of Rule 26 of the Rules of 1960, therefore, the same is hereby quashed. The respondents are directed to provide an opportunity of hearing to the petitioner and then to decide the application for renewal afresh. For the purpose the petitioner shall submit a representation of the Secretary, Department of Mines, Government of Rajasthan within a period of four weeks from today and its representative shall remain present before the Secretary, Department of Mines, Government of Rajasthan for personal hearing on 20.3.2006. The petitioner may

also submit a representation to the Central Government to establish that the Asbestos mining is always not hazardous to human life. If any such representation is filed by the petitioner then the same shall be considered and decided by the Central Government expeditiously.

With the orders above the writ petition is disposed of. No order as to cost.

(GOVIND MATHUR),J.

Ashwini/–